RAPE — INTERCOURSE WITH WIFE UNDER AGE OF CONSENT. — Defendant contracted a common-law marriage with A, a female under the age of sixteen. A statute set the age of consent to marriage at sixteen for females. (1915 MICHIGAN COMPILED LAWS, § 11362.) Defendant was convicted of statutory rape on A, under a statute providing for the punishment of any person who shall ". . . unlawfully and carnally know and abuse any female under the full age of sixteen years." (1915 MICHIGAN COMPILED LAWS, § 15211.) He brings exceptions. *Held*, that the conviction be reversed and defendant discharged. *People* v. *Pizzura*, 178 N. W. 235 (Mich.).

Common-law marriages are valid in most jurisdictions in the United States, including Michigan. *Meister* v. *Moore*, 96 U. S. 76. *Peet* v. *Peet*, 52 Mich. 464, 18 N. W. 220. Where one party is under the age of consent, a marriage is voidable, but until avoided it is valid. *People* v. *Slack*, 15 Mich. 193; *State ex rel. Scott* v. *Lowell*, 78 Minn. 166, 80 N. W. 877; *Beggs* v. *State*, 55 Ala. 108. *Contra*, *Shafher* v. *State*, 20 Ohio 1. At the time of the intercourse, therefore, A was defendant's wife. It is universally held that a man cannot commit rape on his own wife. *Frazier* v. *State*, 48 Tex. Cr. 142, 86 S. W. 754. The reasoning usually adopted is that a wife gives irrevocable consent to intercourse. See 1 HALE P. C. 629. It is on this reasoning that the court in the principal case chiefly relies. But such an explanation is inadequate in this case, for under the statute consent of a female under sixteen is not a defense. *People* v. *Smith*, 122 Mich. 284, 81 N. W. 107. The result of the case is properly reached by statutory construction. The word "unlawfully" in a similar statute has been held to exclude intercourse between husband and wife. *Plunkett* v. *State*, 72 Ark. 409, 82 S. W. 845. Another court has given the same effect to the word "abuse." *State* v. *Rollins*, 80 Minn. 216, 83 N. W. 141. At all events, it is clear that the legislature did not intend to make criminal the intercourse to which a husband is entitled by the marital relation. See TIFFANY, LAW OF PERSONS AND DOMESTIC RELATIONS, § 31.

SALES — IMPLIED WARRANTIES — LIABILITY OF MUNICIPALITY FOR FURNISHING IMPURE WATER. — The defendant city supplied the plaintiff with water. The plaintiff contracted typhoid fever through the use of this water. He sued the city, alleging the breach of an implied warranty that the water was wholesome. The city demurred. *Held*, that the demurrer be sustained. *Canavan* v. *City of Mechanicville*, 180 N. Y. Supp. 62 (App. Div.).

One ground of decision given by the court was that there was no sale of the water. This seems erroneous. Water confined in pipes is personal property. *Clark* v. *State*, 14 Okla. Crim. 284, 170 Pac. 275; *Bear Lake Waterworks Co.* v. *Ogden City*, 8 Utah, 494, 33 Pac. 135; *City of Milwaukee* v. *Zoehrlaut Leather Co.*, 114 Wis. 276, 90 N. W. 187. See 1 WIEL, WATER RIGHTS IN THE WESTERN STATES, 3 ed., § 35. When such water is supplied to a consumer for a price, there is a sale. *People ex rel. Heyneman* v. *Blake*, 19 Cal. 579; *Jersey City* v. *Harrison*, 71 N. J. L. 69; 72 N. J. L. 185; 58 Atl. 100. See also *Wagner* v. *City of Rock Island*, 146 Ill. 139, 34 N. E. 545. Thus the city seems clearly to have been a dealer in water. At common law, a dealer in provisions for immediate use impliedly warrants them to be wholesome. *Hoover* v. *Peters*, 18 Mich. 51; *Race* v. *Krum*, 222 N. Y. 410, 118 N. E. 853. See WILLISTON, SALES, § 242. See also 32 HARV. L. REV. 71. It is held in New York this rule is not changed by the Sales Act. *Rinaldi* v. *Mohican Co.*, 225 N. Y. 70, 121 N. E. 471. The city, while not a dealer in provisions in the strict sense of the term, was a dealer in an article to be used for human consumption, and should, it would seem, come under the rule. Nor should the fact that the dealer was a municipal corporation affect the result. The operation of waterworks is not a governmental function, and subjects the municipality to the same liability as a private company. *Keever* v. *City of Mankato*, 113 Minn.